

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Austin, Texas

THE GREATER TUNA CORPORATION

Employer

and

Case No. 16-RC-10106

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS,
ARTISTS, AND ALLIED CRAFTS OF THE UNITED STATES,
ITS TERRITORIES, AND CANADA 1/**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: 2/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/

3. The labor organization involved claims to represent certain employees of the Employer. 4/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 5/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time lighting, sound, staging, property, dressers, and technical swing, including the master electrician, master carpenter, sound engineer, and head wardrobe dresser.

EXCLUDED: All other employees, technical director and supervisors as defined in the Act.

DIRECTION OF ELECTION 6/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including

employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists, and Allied Crafts of the United States, Its Territories, and Canada.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the **full names and addresses** of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the

election. In order to be timely filed, such list must be received in the NLRB Region 16, 615 E. Houston Street, Room 565, San Antonio, Texas 78205-2040, on or before June 1, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 8, 1999.

DATED this 24th day of May 1999, at Fort Worth, Texas.

/s/ Martha Kinard

Martha Kinard
Acting Regional Director
National Labor Relations Board
Region 16
819 Taylor Street, Room 8A24
Fort Worth, Texas 76102-6178

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1. The petition was amended at the hearing to reflect the Petitioner's correct name.
 2. Both Petitioner and Employer timely filed briefs which were duly considered.
 3. The parties stipulated, and I find, that Greater Tuna Corporation, a California Corporation, is engaged in the production, management, and booking of national tours, primarily featuring the Tuna trilogy. During the past twelve months, the

Employer, in conducting its business operations, performed shows throughout the United States and derived gross revenues from such performances, valued in excess of \$500,000. During the same period, the Employer purchased goods and services from enterprises located outside the State of Texas, which were transported directly across various state lines, valued in excess of \$50,000.

4. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. The Petitioner seeks to represent a unit consisting of all lighting, sound, staging, property, dressers, and technical swing, including the master electrician, master carpenter, sound engineer and head wardrobe dresser. The Employer contends the only appropriate unit would be comprised of four employees including all technical employees, assistant technical director and dressers excluding performers, stage manager, company manager, sound designer, carpenter, electrician, head wardrobe dresser, guard, and supervisors and managers as defined in the Act. The Employer contends that its master electrician, master carpenter, head wardrobe dresser and sound engineer are department heads, possessing the authority described in Section 2(11) of the Act and must therefore be excluded from the petitioned-for unit. The parties stipulated that the Employer's two dressers and technical swing are properly included in the unit. The Employer also argues that no election should be held because of the imminent dissolution of the bargaining unit.

The Employer's organizational structure consists of the Owner Charles Duggan, General Manager in Austin, Texas, Carla McQueen and another General Manager Joe Mac in San Francisco, California. Joe Sears and Jaston Williams are the two actors and authors of the productions. They have the authority to direct the work of the technical crew or anyone who has any effect on their performance. At the end of each tour, Duggan, Sears and Williams discuss which employees will be invited back for another tour.

The Employer's production operations also include a Company Manager, Ben Fritzier, who is responsible for overseeing the company's transportation from one venue to another by making airline, hotel and car rental reservations. Fritzier is also responsible for box office settlements. Stage Manager Bob Tolaro is responsible for ensuring each department has completed its job and that the show is ready to be performed. Assistant Stage Manager Root Choyce acts as backup for Tolaro and also serves as the lighting designer. All three travel with the production. The Employer also employs a technical director who reports to the Employer's stage manager and assistant stage manager. The Employer's technical crew, consisting of one technical director, four department heads, one technical swing and two dressers are collectively responsible for carrying out the technical aspects of the production, including staging, scenery, audio, lighting and wardrobe. The department heads include the master electrician, sound engineer, master carpenter and head wardrobe dresser who report to the stage manager. The technical swing is trained to help the other departments as deemed necessary. In the wardrobe

department, there are two dressers. The Employer also employs an individual who is responsible for all the concessions. The technical crew's contracts are only valid for each tour. At each venue, the technical director contacts the union or the theater house person to hire a local crew of carpenters, electricians, sound and wardrobe personnel to work in conjunction with the technical crew. A theater that only utilizes union crewmembers to perform work at the theater is known as a "union venue."

Before the tour commences, the Employer has a preproduction period, when the technical crew prepares their departments by building the sets, creating costumes and preparing electric and sound equipment. In addition to the aforementioned preproduction work, the Employer's department heads collaborate in the preparation of a technical rider, a written document outlining the equipment and additional employees required to load, unload and set up the production. All four departments provide the technical director a proposal of what will be needed to successfully produce the show. After this is completed, the technical rider is forwarded to each venue. In turn, the venue provides to the Employer a technical rider for its theater. The production is usually in a venue for a period of one week.

When the production arrives at a venue, the master electrician and sound engineer commence the pre-hang, consisting of hanging the electrical and sound equipment. Pursuant to the provisions of the technical rider, a local crew of 16 is used. The next day, the master carpenter and the wardrobe department unload the set and costumes from the truck with the help of 27 local crewmembers. This process is commonly referred to as "load-in." A production meeting is held during the week, with the stage manager, assistant stage manager, company manager, the four department heads and the technical swing. The stage manager takes minutes and goes through the list to determine what will be needed at the next venue.

The technical crew is paid a salary for an eight show week, which equates to \$800.00 a week. Additional compensation includes \$40.00 a week for medical insurance and approximately \$90.00 per diem. They are paid one-sixth of their salary for working a seventh day and for performing additional work. Only the sound engineer is paid more (\$1,040 a week) given his more than ten-year tenure with the Employer. The sound engineer also receives additional compensation for his responsibilities as the sound designer.

With respect to the disputed classifications in this matter, the record reflects the technical director and master electrician positions are occupied by one individual. The record does not reflect the percentage of time this individual spends performing as technical director versus master electrician. The record does reflect, however, that the technical director responsibilities are a regular and substantial part of this individual's work. The current technical director/master electrician has been employed since the beginning of February 1999. As referenced above, the technical director obtains information from each department to compile a technical rider for the current production on tour. Furthermore, he is responsible for updating the

technical rider for each production. The technical rider also identifies him as the Employer representative to contact if there are any problems. The record further reflects that the technical rider provides the stage manager and the technical director the final determination as to the number of local crewmembers and hours of work needed. As the Employer's representative in dealings with theaters and local unions, he is also responsible for contacting each venue a week or two before the date of the show to ensure the proper equipment is available and the appropriate number of local crew are hired. When he contacts the venue, the local union steward or the theater's house person will advise him if there is a problem with equipment or number of crew. If so, he has the authority to request the appropriate crew and rent or purchase additional equipment. The record evidence demonstrates the technical director is responsible for informing the department heads of these changes.

The technical director also has the authority to schedule the local crew's reporting time, lunch breaks and quitting time. The record evidence shows the department heads request approval from the technical director before reassigning, transferring or granting overtime to the crewmembers. If the show is not performing in a union venue, the technical director has the discretion to direct the local crew to take a split lunch, with the sound and carpenter crew having a separate lunch from the electricians. While on tour and on the day of load-in, the Employer's current technical director serves as master electrician. During performances, he acts in both positions and is the "trouble shooter" responsible for anything that needs to be fixed. The record further reflects the Employer's current technical director has been in this position for less than four months and is not familiar with all the Employer's policies. Consequently, he verifies his decisions with the Employer's general manager or other management representatives to ensure he is consistent with the Employer's policies.

The Employer's master electrician is responsible for the proper installation of lighting at each venue. Approximately 12 local crewmembers assist him in accomplishing the task. The master electrician also orders any additional equipment needed at a particular venue in order to comply with the technical rider. During installation, he oversees eight local crewmembers. He also assists the lighting designer with focusing of the lights before the show.

In further support for its contention that its technical director and department heads are supervisors as defined in Section 2(11) of the Act, the Employer presented the testimony of Glen Schnittke, its former technical director and master carpenter. Schnittke was the technical director in the prior tour and spent two weeks in February 1999 training the current technical director. The record reflects Schnittke, in his position as technical director, had the authority to hire and fire. The record further reflected multiple examples of Schnittke effectively recommending the hiring of employees, such as the current technical director and master carpenter. He was also responsible for signing off on the local labor sheets. The record does not reflect who is performing this task currently. Additionally, he made large

purchases on behalf of the Employer, such as two prop doors valued at \$5000.

Based on the foregoing evidence, I find the technical director to be properly excluded from the petitioned for unit as a supervisor within the meaning of Section 2(11) of the Act. See *Union Square Theatre Management, Inc.*, 326 NLRB No. 17, 18 (1998). The record reflects the technical director plays an integral role in the formulation of the technical rider. As referenced above, this governing document dictates the number and classification of employees to be hired at a particular venue. He is also the Employer's primary contact with representatives of the venues at which the Employer performs its plays. The record also reflects that the technical director regularly exercises independent judgment in assigning, reassigning and hiring additional employees. The technical director also coordinates the work of department heads and facilitates the exchange of information between the department heads which is necessary to successfully complete the production crews' responsibilities. In sum, the technical director possesses supervisory indicia as defined in Section 2(11) of the Act and there is sufficient record evidence to conclude that there is "some kinship to management, some empathetic relationship between employer and employee" to conclude he is a supervisor. *Advance Mining Group*, 260 NLRB 486, 507 (1982) citing *Security Guard Service, Inc.*, 154 NLRB 8 (1965) enf'd *NLRB v. Security Guard Service, Inc.*, 384 F.2d 143, 149 (5th Cir. 1967).

The Employer also employs an individual who serves as both the sound engineer or operator and sound designer. As the sound engineer, he is responsible for the installation of the sound equipment, which includes checking the sound reinforcement, operating the sound cues and mixing the microphones for the performance. Before arriving at the theatre, he contacts the theater to review the theater's technical packages to determine if additional equipment should be rented. On pre-hang day, the sound engineer tests the theater's acoustics and instructs the local crew where to place the speakers, stack equipment, lay cables, unpack and set up equipment. He has between three to five local crewmembers assist him. These crewmembers have been assigned pursuant to the requirements of the technical rider. During the show, he is stationed at the mixing board where he mixes the microphones and sound effects.

The record further reflects that based on his technical expertise, the Employer's sound engineer/sound designer recommended the purchase of a \$22,000 wireless microphone system. Initially, he submitted a proposal requesting the updating of this system and was authorized to find and buy the most appropriate system. After he found the system, he submitted another proposal outlining the benefits, identifying the vendor and specifying the price. He was given approval to purchase the equipment by the Employer's company manager. As referenced above, the Employer's sound engineer is also the sound designer, who creates all the sound effects used in the show by assembling musical cues and sound effects, recording voice tracks, mixing and editing those tracks, and then packaging them to be performed. The Employer's sound designer has used recording studios or

individuals to assist him in recording and collecting sound effects.

The Employer also employs three dressers in the wardrobe department. The record reflects that two of the Employer's three dressers share responsibility for stitching and constructing costumes. The third dresser is primarily responsible for craft work with paints. The record further reflects that the three dressers do not direct each other, instead the costume designer directs the dressers in assembling, sewing, purchasing and altering the costumes. During preproduction, the dressers work at the Employer's wardrobe shop in Austin, where repairs or new costumes are made. During performances, the three dressers and a local wardrobe person hired for that particular venue's performance prepare the costumes and dress the actors, with the actors retaining the final word on how they are dressed. If the venue has a separate wardrobe local union, the department head contacts that local union and advises them of the requirements pursuant to the technical rider. If there is not a separate wardrobe local union, then the technical director is responsible for contacting the local union or theater. The record reflects before a work call (additional time needed to repair or alter a costume) is requested the Employer's two dressers primarily responsible for stitching discuss the call and seek approval from the company manager. As part of their job sharing responsibilities the same two dressers alternate the work calls. The record further reflects that one of the dressers identified by the Employer as the wardrobe department head owns a computer and based on his computer proficiency has developed a database containing the names of individuals the wardrobe department has worked with in the past. All three occasionally purchase small items and turn in the receipts to the company manager for reimbursement. The costume designer has final say as to whether or not fabrics or items will be used on a costume, and has exercised this authority on multiple occasions.

The final classification in dispute is that of the master carpenter. In preproduction, the master carpenter verifies that the theater plans are accurate and the sets are in working condition. At the load-in, the stage manager unpacks the first half of the truck called the dance floor then the master carpenter unloads the remaining portion of the truck. The master carpenter does not have discretion to choose where the set is placed because placement is contingent on the theater size and the lighting. During the show, he serves as a company stagehand and is responsible for some of the technical pieces used in the production, such as the unidentified flying object (UFO), a prop used in the "Red, White and Tuna" production. Pursuant to the provisions of the technical rider, four local crewmembers are assigned to him. The stage manager decides all the cues with the master carpenter merely following these cues. At the conclusion of the show, he breaks the set and loads it into the truck.

As referenced above, the Employer adduced testimony from Schnittke, its former master carpenter, that he had the authority to hire, assign work and fire. In the winter of 1997, Schnittke reassigned a local crewmember for drinking and belligerent conduct, but the record reflects he discussed this matter with the assistant stage manager prior to the final decision. Schnittke also had the authority

to purchase items on behalf of the Employer. The record is not clear whether these actions were taken by Schnittke acting in his capacity as master carpenter or in conjunction with his technical director duties. The record also does not reflect that the current master carpenter has made any major purchases. Further, there is no record evidence of the current master carpenter hiring or firing any employee.

With regard to the alleged supervisory status of the department heads, it is well established that the burden of proof to exclude an individual as a supervisor is on the party seeking such exclusion. *Bennett Industries*, 313 NLRB 1363 (1994). It is also well established that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on an employee, *provided* that authority is exercised with independent judgment on behalf of management and not in a routine manner. Thus, the exercise of some otherwise supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employee. *J.C. Brock Corp.*, 314 NLRB 157 (1994) at 157, 158. Additionally, the mere fact that an employer asserts that an employee supervises other employees is not enough to establish that the individual is a supervisor within the meaning of Section 2(11) of the Act. *North General Hospital*, 314 NLRB 14, 16 (1994). Likewise, an employee does not become a supervisor simply because he has greater skills and job responsibilities or more duties than fellow employees. *Baby Watson Cheesecake*, 320 NLRB 779, 783 (1996) citing *Federal Compress Warehouse Co. v. NLRB*, 398 F.2d 631 (6th Cir. 1968). While the Employer urges that its department heads have the authority to hire, the record reflects the technical rider provides the number to be hired and the technical director, not the department heads, coordinates all hiring decisions with the local union or theater house. Additionally, the final hiring decisions are made by the Employer's general manager, stage manager or technical director. If the department heads require further assistance, they inform the technical director or stage manager, who then request the additional crewmembers.

In its brief, the Employer cites numerous instances of what it purports are examples of its department heads exercising the authority to hire or effectively recommending the hiring of an employee. A close review of the record does not support the Employer's contention. While the Employer asserts that its master carpenter effectively recommended the hiring of ten employees, this example of alleged supervisory authority merely involved the master carpenter's routine assessment of the approximate number of workers needed to complete repair work on a set. Additionally, the record does not reflect that this repair work had been done as of the hearing in this matter. Moreover, the record reflects that the employees who will perform the work in question will be drawn from a pool of employees used by an opera shop in Austin, Texas. Thus, there is no evidence the Employer's master carpenter will be required to exercise any independent judgment in this routine selection of workers.

Additionally, the Employer argues one of its dressers hired two seamstresses to assist in the completion of new costumes. The record reflects, however, that the

decision to construct new costumes was made by the costume designer. Furthermore, it was the costume designer who directed the dresser to hire these employees and she further advised the dresser of the source to use for finding this additional help. Before hiring the individuals, he obtained the general manager's approval. This cited example reflects no exercise of independent judgment on the part of the dresser in question. In sum, there is no evidence that any of the Employer's current department heads have exercised independent judgment in hiring. Moreover, there is no evidence whatsoever that any current department head hired any employee within the bargaining unit.

The record also does not support a finding that the department heads assign the work of local crews. Rather, the record reflects the technical director, local union steward or theater house person assigns local crews to each department. As the local crewmembers are experienced stagehands, the department heads merely assign and direct what tasks need to be done. The assignments are based on the local crewmember's knowledge, experience and ability to perform the job. Therefore, such decisions regarding assignment or direction of work are based on the department heads' experience and familiarity with the production, rather than an exercise of supervisory authority.

The Employer also contends that its department heads possess the authority to fire, reassign employees and recommend firing. In support of this contention, the Employer points to what it purports is record evidence of instances of its department heads actually exercising such authority. Again, a close review of the record does not support such a contention. Initially, the Employer argues that its sound engineer has exercised the authority to fire/reassign employees. The incident upon which the Employer relies to support this assertion actually involved the sound engineer requesting a local union steward provide another crewmember capable of performing sound work. The record evidence shows the department heads only request the reassignment of a crewmember if the employee is unable to perform the assigned task. When this occurs, the department head informs the technical director, who then transfers the employee from that department. In a union venue, the technical director requests the local union steward to do this. As such, the evidence of work assignment or reassignment in this case indicates the kind of routine, decision-making authority typical of a non-supervisory leadman. *North Jersey Newspapers*, 322 NLRB 394, 395 (1996).

While the record establishes the department heads attend production meetings, I find their attendance is necessitated by their technical or artistic expertise to discuss any potential problems in the show or venue. *Bakersfield Californian*, 316 NLRB 1211, 1214 (1995). In this regard it is also noted that the record reflects the Employer's technical swing also attends production meetings. The record also reflects the department heads earn the same salary as the other members of the Employer's technical staff (with the exception of the sound engineer who receives more pay based on seniority and additional duties) and spend a significant amount of time performing rank-and-file work. Additionally, while there is some evidence

the Employer conferred a supervisory title on at least one of its department heads, the Board has never considered a title to be determinative of supervisory status. *Marukyo U.S.A.*, 268 NLRB 1102 (1984), citing *Golden West Broadcasters*, 215 NLRB 760, 761 (1974). The record further reflects the department heads have trained the technical swing; this by itself does not necessarily confer supervisory status. *Sorenson Lighted Controls*, 286 NLRB 969, 988 (1987).

The record further reflects that while the department heads are given discretion in buying small items and are reimbursed by the Employer, they must get approval for major purchases. One example of a major purchase by a department head (sound equipment) described in the record was made at the Employer's request and was authorized by management. The department head in question merely utilized his technical expertise to recommend the proper equipment. Likewise, with respect to the issue of department heads' authority to authorize overtime or mealtime penalty, (which occurs when the crew works more than five hours without breaking for a meal and the Employer must allow them to break for lunch or provide a meal) the record reflects the department heads make such a request to the stage manager or technical director before such additional work is authorized.

In its brief, the Employer relies on *Union Square Theatre Management, Inc.*, supra, in support of its contention that the department heads are supervisors. With respect to this issue, the Employer's reliance on this case is misplaced. This case only addressed the issue of whether technical directors were supervisors. The department heads in the instant case, unlike the technical directors in *Union Square*, have no authority to hire crews, determine wages or hire their own replacements. In the instant case, the Employer's technical director, not department heads, is responsible for hiring. Furthermore, there is no evidence that the department heads in this matter can determine wages or hire their own replacements. Accordingly, the facts in this case are distinguishable from those in *Union Square*.

Based on the foregoing, I find the technical decisions, assignment of crews, purchases of items and decisions concerning overtime and mealtime penalties made by department heads are not discretionary decisions but are necessary to complete the department heads' jobs. See *General Dynamics Corp.*, 213 NLRB 851, 858 (1974). Based on the foregoing, I find the department heads not to be supervisors as defined in the Act. However, I find the individual who acts as the master electrician and technical director is ineligible to vote because the evidence reflects his duties as a technical director are a regular and substantial part of his job which cannot be "sharply demarcated" from his rank-and-file duties. *Keith Clark Inc.*, 245 NLRB 773 (1979); *U.S. Radium Corp.*, 122 NLRB 468, 473 (1958).

Finally, the Employer contends the petition should be dismissed because of the imminent dissolution of the proposed bargaining unit on July 4, 1999. In its brief, the Employer also contends that the technical crew are temporary employees since they have a definite employment period. Neither of these arguments withstand

scrutiny. Initially, the unit is, in fact, not being dissolved, rather there is simply a scheduled approximate four-month hiatus between productions. Even assuming that a unit dissolution argument was considered in this matter, the facts simply do not support the Employer's contentions. The record reflects the Greater Tuna trilogy (Greater Tuna, Tuna Christmas and Red, White and Tuna) has been in production for approximately 18 years. Furthermore, these three productions tour nine months out of the year. Currently, "Red, White and Tuna" is touring from March 1999 through July 4, 1999. The record evidence further reflects the Employer will be commencing the next tour, "A Tuna Christmas" in mid-November 1999. The record also reflects the Employer's intention to continue the tours as long as possible, including a possible Broadway production in 2001. The record establishes that the Employer has used the same proposed bargaining unit in every production and while no offers of employment have been made to these individuals, the record reflects the Employer will continue to require these job classifications. Furthermore, the Employer has used the current dresser and the sound engineer consistently for several years in its productions. In this regard, the facts herein are more closely analogous to regular seasonal employees who have a reasonable expectation of reemployment. While no offers of employment have been made to these individuals, the Employer will continue to require these job classifications in its future productions. Therefore, based on the Employer's planned continuing production of the aforementioned plays well into the future, the substantial likelihood of future productions and the anticipated continued use of the same proposed bargaining unit in those future productions, I shall deny the Employer's motion to dismiss. Moreover, as the Employer's production will end in July 1999 and commence again in mid-November 1999, I further find an immediate election is appropriate. *Saltwater, Inc.*, 324 NLRB 343, 344 (1997) citing *Elsa Canning Co.*, 154 NLRB 1810, 1812 (1965).

6. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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